

June 15, 2005

Doug Buchanan, Deputy Director
Mountain-Valley
Emergency Medical Services Agency
1101 Standiford Avenue, Suite D1
Modesto, CA 95350

Re: Your Request for Informal Assistance
Our File No. I-05-064

Dear Mr. Buchanan:

This letter is in response to your request on behalf of the Mountain-Valley Emergency Medical Services (“EMS”) Agency and an applicant for the position of the EMS agency’s certification and training coordinator (“coordinator”), for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ Since your letter seeks general guidance and lacks specific information, we are treating your request as one for informal assistance.²

QUESTIONS

1. Does the Act restrict public officials from holding two positions?
2. If not, would the conflict-of-interest provisions of the Act limit the activities of an EMS agency’s certification and training coordinator who would also work for a base hospital or the nursing registry?

CONCLUSIONS

The Act does not bar public officials from holding two positions; however, outside employment may disqualify the EMS coordinator from decisions that affect the EMS agency.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed.)

FACTS

Your agency, the Mountain-Valley EMS Agency, is a multi-county agency formed through a Joint Powers Agreement (“JPA”) between the counties of Alpine, Amador, Calaveras, Mariposa and Stanislaus for the purpose of establishing and operating a regional emergency medical services system. In previous advice, your agency’s regional advisory committee members were found to be public officials under the Act. (See *Andriese* Advice Letters, Nos. A-03-016 and A-02-276.) Your agency is currently recruiting for a full-time certification and training coordinator, who would be classified as an exempt, salaried employee. A person within this job classification is required to file an annual Form 700, Statement of Economic Interests, and is primarily responsible for overseeing all personnel certification programs and emergency medical services training activities.

The EMS system uses dispatch centers, ground ambulance services and regional hospitals (“base hospitals”). One job applicant has specifically requested allowance to continue working at one of your local base hospitals. You explain that this would pose a potential for conflicts of interest, due to the contractual relationship which exists between the agency and base hospital, as well as the authorization and oversight authority for all mobile intensive care nurses employed by the local hospitals. The applicant also requested further clarification regarding employment through a local nursing registry, which sub-contracts nurses to the local hospitals.

ANALYSIS

There is nothing in the Act that prohibits a public official from holding two public positions concurrently, although other laws outside the jurisdiction of the Fair Political Practices Commission (“Commission”) may restrict the ability of a public official to hold two public offices simultaneously, if those offices are determined to be “incompatible” offices. The Commission’s advice is limited to matters arising under the Act. (Regulation 18329(b)(8)(d).) We urge you to check with the state Attorney General’s office or the county counsel of your jurisdiction to determine if there are other laws that may be applicable in light of the facts you present.

Holding the position of the EMS coordinator while working for a base hospital or nursing registry does not, in itself, create a disqualifying conflict of interest under the Act. (See e.g. *Shanks* Advice Letter, No. I-05-056; *Foster* Advice Letter, No. A-02-125.) The Act’s conflict-of-interest rules prohibit public officials from making, participating in making, or in any way attempting to use their official positions to influence governmental decisions in which they have financial interests. We have provided below a brief overview of the eight-step conflict-of-interest analysis, but do not have enough information to apply this analysis at this time. (Section 87100; regulation 18700(b) describes in detail each step of the analysis that follows.)

Steps 1 & 2. Is the applicant a public official who may make, participate in making, or use the official position to influence a governmental decision?

The Act's conflict-of-interest rules apply only to public officials. If the applicant became the EMS coordinator, an exempt, salaried employee, he or she would be a public official governed by these provisions. (Section 82048; regulations 18700(b)(1) and 18701.)

The prohibition of section 87100 applies to specific conduct by public officials making, participating in making, or using one's official position to influence a governmental decision. (Regulations 18702.1-18702.4.) As the EMS coordinator, the applicant would presumably be required to make, participate in making or influence particular governmental decisions. Therefore, if this applicant is selected, his or her decision-making activities would be covered by the Act's conflict-of-interest rules. (Regulation 18700(b)(2).)

Step 3. What are the applicant's economic interests?

The Act's conflict-of-interest provisions apply only to conflicts arising from economic interests. We do not have specific facts regarding the economic interests of the applicant; however, a public official has an economic interest in:

* A business entity in which he or she has a direct or indirect³ investment of \$2,000 or more (section 87103(a); regulation 18703.1(a)); or in which he or she is a director, officer, partner, trustee, employee or holds any position of management (section 87103(d); regulation 18703.1(b));

* Real property in which he or she has a direct or indirect interest of \$2,000 or more (section 87103(b); regulation 18703.2);

* Any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision (section 87103(c); regulation 18703.3);

* Any source of gifts to him or her if the gifts aggregate to \$360 or more within 12 months prior to the decision (section 87103(e); regulation 18703.4);

* His or her personal finances, including those of his or her immediate family⁴ -- this is the "personal financial effects" rule. (Section 87103; regulation 18703.5.)

³ For purposes of section 87103, "indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater."

⁴ A public official's "immediate family" includes only the official's spouse and dependent children. (Section 82029.)

Step 4. Is the applicant's economic interest directly or indirectly involved in the decision?

“In order to determine if a governmental decision's reasonably foreseeable financial effect on a given economic interest is material, it must first be determined if the official's [applicant's] economic interest is directly involved or indirectly involved in the governmental decision.” (Regulation 18704(a).) The answer to this question determines the level at which an effect of a given decision on the economic interest will be deemed “material.”

Because we do not have full information on specific governmental decisions in which the applicant may participate, we provide you with the language of regulation 18704.1, which will assist you in making this determination as the details of particular decisions become known:

“(a) A person, including business entities, sources of income, and sources of gifts, is directly involved in a decision before an official's agency when that person, either directly or by an agent:

“(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

“(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person.

“(b) If a business entity, source of income, or source of a gift is directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(b), section 18705.3(a), or section 18705.4(a), respectively. If a business entity, source of income, or source of a gift is not directly involved in a governmental decision, apply the materiality standards in California Code of Regulations, Title 2, section 18705.1(c), section 18705.3(b), or section 18705.4(b), respectively.”

Steps 5 and 6. Will there be a material and foreseeable financial effect on the applicant's economic interests?

Once a public official identifies his or her relevant economic interests, the official must evaluate whether the decision will have a material financial effect on any of those

economic interests. The official must find the applicable materiality standard in Commission regulations. (Section 87103; regulation 18700(b)(5), regulation 18705, et seq.) In addition, the official must determine if a material financial effect is reasonably foreseeable. An effect upon economic interests is considered “reasonably foreseeable” if there is a substantial likelihood that it will occur. (Regulation 18706(a).) Whether the financial consequences of a governmental decision are substantially likely at the time the decision is made depends on the facts surrounding the decision. A financial effect need not be certain to be considered reasonably foreseeable, but it must be more than a mere possibility. (Regulation 18706; *In re Thorner* (1975) 1 FPPC Ops. 198.)

Steps 7 & 8. Exceptions

Even if you determine that a decision would have a reasonably foreseeable material financial effect on one or more of the applicant’s economic interests, he or she may still participate in the decisions if the effect is not distinguishable from the effect on the public generally. However, you have not suggested to us that the public generally exception would apply to the decisions in question here.

Additionally, in certain rare circumstances, the applicant may be called upon to take part in a decision despite the fact that he or she may have a disqualifying conflict of interest. This “legally required participation” rule applies only in certain very specific circumstances where the governmental agency would be paralyzed from acting. You have also not indicated this exception will apply.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By:

Galena West
Counsel, Legal Division

Enclosure

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